

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5920

PETITION OF RENEE ASHER
(Hearing held December 3, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, February 6, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-.1.323(a) and 59-B-3.2. The existing single-family dwelling requires a variance of 2.10 feet as it is within 12.90 feet of the street line setback (McKinley Street). The petitioner proposes to construct a second-story addition that requires a 2.17 foot variance as it is within 12.83 feet of the street line setback (McKinley Street); a one-story addition that requires a 1.50 foot variance as it is within 13.50 feet of the street line setback (McKinley Street); and a bay window that requires a one (1) foot variance as it is within eleven (11) feet of the street line setback (McKinley Street).

The required street line setback for the existing single-family dwelling, the second-story addition, and the one-story addition is fifteen (15) feet. The required street line setback for the bay window is twelve (12) feet.

Jay Davis, an architect, appeared with the petitioner

The subject property is Lot 1, Block 29, Bradmoor Subdivision, located at 8515 Hempstead Avenue, Bethesda, Maryland, 20817, in the R Zone (Tax Account No. 00589498).

Decision of the Board: Requested variances for the existing single-family dwelling and a second-story addition **granted**.
Requested variances for a one-story addition and a bay window **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct an 8 x 15.6 foot second-story addition above the existing first floor, an 8 x 18 foot one-story addition, and a 2 x 8.6 foot bay window. The existing dwelling is located in the northern side yard setback.
2. Mr. Davis testified that the property is a corner lot, located at the intersection of Hempstead Avenue and McKinley Street. Mr. Davis testified that the residence faces Hempstead Avenue and that the property is adversely

impacted because it must meet two front lot line setbacks, instead of a side yard setback for the McKinley Street side. Mr. Davis testified that the proposed addition will not impact neighboring Lots 11, 13 and 16 because those lots do not front on McKinley Street. Mr. Davis testified that new construction could not be added to the rear of the residence because it would eliminate the open space on the property.

3. Ms. Asher testified that the proposed construction would be integrated into the existing house and that the variance request is supported by her neighbors. Ms. Asher testified that the design and placement of the existing house precludes new construction without the redesign of the existing dwelling. The property is 7,000 square feet.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances for a one-story addition and a bay window must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no exceptional topographical or other conditions peculiar to the property that are not shared with the neighboring properties. Additionally, the Board finds that the petitioner's property is consistent in shape and size with the other lots in the neighborhood. See, Exhibit No. 7 (zoning vicinity map).

The Board notes that the siting of the residence does not create a zoning reason for the grant of a variance and that all corner properties in the County must meet the same zoning standards as the petitioner's property.

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. According the requested variance of 1.50 feet from the required fifteen (15) foot street line setback for the construction of a one-story addition and of one (1) foot from the required twelve (12) foot street line setback for the construction of a bay window are **denied**.

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances requested for the existing single-family dwelling and the second-story addition can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a

specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The northwest section of the existing single-family dwelling is currently located in the side yard setback. The petitioner proposes to construct a second-story addition above the existing first floor footprint. The proposed addition will not expand or increase the footprint of the existing first floor. The Board finds that these are exceptional circumstances that are peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions

The Board finds that the requested variances for the existing single-family dwelling and the second-story addition are the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed construction will not materially impact the view from the neighboring properties and that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of 2.10 feet from the required fifteen (15) foot street line setback for the existing single-family dwelling and of 2.17 feet from the required fifteen (15) foot street line setback for the proposed construction of a second-story addition are **granted** subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variances.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 10, 11 and 13(a) through 13(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 6th day of February, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.